IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 121 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PHILIPS GLASS INDIA LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 121 of 2002

MR SN SOPARKAR Ld. SENIOR ADVOCATE with

MRS SWATI SOPARKAR for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 28/11/2002

ORAL JUDGEMENT

1. This is a petition filed by a company namely, Phillips Glass India Limited for amalgamation of the

petitioner company with Phillips India Limited under Section 391 read with Section 394 of the Companies Act, 1956. Under the scheme there are two other Transferor Companies viz. Punjab Anand Lamp Industries Limited and Electric Lamp Manufacturers (India) Limited having their registered offices in Chandigarh and Kolkatta. The Transferee company also has its registered office in Kolkatta. Hence, the necessary proceedings have been taken up in the respective High Courts of Punjab and Haryana and West Bengal and the petitioner being the only company in the State of Gujarat has filed the necessary proceedings before this High Court.

2. Phillips Glass India Limited, the petitioner company is engaged in the business of manufacturing and supplying the glass shells to various companies including the other companies of the same group for further manufacturing of the lamps and tube lights. Phillips India Limited, the transferee company is engaged in the business of manufacturing and supplying of all kinds of electrical lamps, radio apparatus and different electronics products. Para-22 of the petition gives details of the objectives and advantages that would flow by virtue of the amalgamation of these companies. The Scheme of Amalgamation has been approved in the meeting of the Equity Shareholders of the company by requisite majority. The Preference Shareholders had given their written consents approving the said scheme, and hence, their meeting was dispensed with. There are no secured creditors of the petitioner company and since the company assured that the rights of the unsecured creditors will not be in any way affected by the scheme and the Transferee Company undertakes to meet with all the liabilities of the Transferor Company, the meetings of the unsecured creditors of the company were dispensed with. After the petition was admitted they were advertised in the newspapers (Indian Express Ahmedabad and Vadodara Editions dated 31.7.2002 Loksatta-Jansatta Vadodara Edition dated 31.7.2002 and Gujarat Samachar Ahmedabad edition dated 31.7.2002). No one has come forward before this Court opposing sanction of the Scheme of Amalgamation except one creditor. The issue having been settled between the parties outside the court, the said creditor has subsequently filed affidavit dated 13.8.2002 withdrawing his objection and confirming the consent for the sanction of the scheme.

3. Notice of the petition have been served upon the Central Government and Smt. Parinda J. Davawala, ld. Addl. Central Govt. Standing Counsel appearing for the Central Government have put on record the letter dated

23.8.2002 wherein it is stated that the Central Govt. has no objection in sanctioning the scheme of Amalgamation except on one issue pertaining to the filing the necessary forms for the increase in the Authorised Capital of the Transferee Company. My attention is drawn to the judgment dated 3.7.2002 passed by the Andhra Pradesh High Court in the matter of Godrej Plant Bio-tech Limited being Company Petition No. 56 of 2002, wherein similar issue had arisen. Apart from this, it has been submitted that the Transferee Company has filed an undertaking before the Kolkatta High Court for the compliance of all the legal requirements for the purpose of increasing the authorised capital. In view of the undertaking filed by the Transferee Company before the Kolkatta High Court for compliance of the legal requirements for the purpose of increasing the authorised capital, no directions are required to be given in the present petition.

4. Notice of the transferor company has also been served upon the Official Liquidator as required under second proviso to section 394(1) of the Act and the Official Liquidator has filed his Report dated 14.8.2002 stating that the affairs of the transferor company are not materially prejudicial to the interests of its members or to public interest.

5. It is further revealed from the record that one Mr. Suhas Arvind Ghurge, partner of M/s. Consultants Combine, Registered Architect firm having their office at Bldg. No. 5., Opp. Bldg. No. 50, Pantnagar, Ghatkopar (E), Mumbai-400 075, has filed affidavit before this Court on 14.8.2002 stating that the firm was appointed as the Architects for designing & executing the project of CG Glass Ltd., at Kural village, Tal. Padra, Jambusar Road, Vadodara, which was taken over by the petitioner-company. The said CG Glass Ltd. was liable to pay to the said firm their professional fees for the project work amounting to Rs. 7,06,336/- as the agreed balance bill amount and same liabilities were taken over by the petitioner-company. It is further stated in the affidavit that the said amount has not been paid to the said firm by the petitioner-company after taking over from CG Glass Ltd. It is, therefore, prayed that the said liabilities of Rs. 7,06,336/ of the petitioner-company shall be included at the time of amalgamation, so that the transferee company will pay to the said firm the said liability of Rs. 7,06,336/. It is, therefore, ordered that this liability of the petitioner-company should also form part of the liabilities which is taken over by the transferee

company.

6. It is further revealed from the Chartered Accountant's report produced by the OL at Annexure-A to his report that in the year 1998-99 the previous management initiated an audit by KPMG Peat Marwick of transactions between CG Glass Ltd. and one of its promoters, Crompton Greaves Ltd. covering inter alia the marketing arrangement between the two companies. Based on the said audit an amount of Rs. 31.3 million was recovered by CG Glass Ltd. form Crompton Greaves Ltd. during the financial year 1999-2000. In these circumstances the present management is of the view that the recovery made was fair and adequate. In the absence of the Report of KPMG Peat Marwick and this being a matter of business policy, the Chartered Accountant has refrained to make any comments thereon. In this connection, an affidavit was filed by Mr. Ashok Nambissan, Director of the petitioner-company stating that the KPMG Audit was initiated by Commonwealth Development Corporation (CDC) one of the erstwhile promoters of the company. The report of the Audit was given only to CDC. Despite several requests, for reasons of confidentiality, CDC has not provided the petitioner-company with the copy of the Audit report. The Chartered Accountant, after having observed about this transaction, should have insisted for the said report. The affidavit filed by the Director of the Petitioner-company does not lead to any convincing reason and merely on account of reasons of confidentiality the report cannot be withheld by CDC one of the erstwhile promoters of the company. The OL has also not mentioned this aspect in his report. In any case, there is nothing on record at present before the court which would have any adverse implication on the scheme of amalgamation. It is, however, observed that the transferee company would look into this aspect of the matter.

7. I have heard Mr. Saurabh N. Soparkar, ld. Senior Advocate appearing with Smt. Swati S. Soparkar, ld. Advocate for the petitioner company. Having gone through the petition and considering the submissions made, I am satisfied that amalgamation would be in the interest of the companies and their members. Under the circumstances the Scheme of Amalgamation (Annexure-C to the petitions) is sanctioned. The prayers in terms of para-48 of the petition are granted.

8. The petition is disposed of accordingly. So far as the costs to be paid to the Central Government

Standing Counsels are concerned, I quantify the same at Rs. 3,500/ in one set to be paid to Smt. P.J. Davawala.

(K.A. PUJ, J.)
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